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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
Policies and Rules Concerning
Toll Fraud

)
) CC Docket No. 93-292
)

REPLY COMMENTS OF THE
NORTH AMERICAN TELECOMMUNICATIONS ASSOCIATION

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SUMMARY

IXCs currently hold customers strictly liable for any toll fraud associated with PBXs. This "system" generates litigation and excessive costs, causes unnecessary stress, ill-will and confusion throughout the community of business end users, and is antithetical to the cooperation that the Commission recognizes is essential to combatting toll fraud. The Commission must relieve customers of the burden of sole responsibility for toll fraud and rule that carriers may not hold customers strictly liable for toll fraud.

Carriers should be required to give specific warnings to customers telling customers the steps they must take to safeguard the IXC's network. IXCs should be permitted to hold customers liable only if customers do not take the specified steps, such as following carriers' specific instructions for preventing remote access; controlling the distribution and use of authorization codes; notifying the carrier promptly after learning of toll fraud, and cooperating with carriers and law enforcement agencies in the investigation of toll fraud. Compliance with these requirements should insulate customers from liability for toll fraud.

The Commission must also require LECs to make international direct-dial blocking available to PBX owners and other business users. IXCs should be required to monitor calling patterns as a part of their basic service, take appropriate action to investigate and resolve toll fraud abuse, and implement a "credit limit" that stops a customer's loss from unauthorized calling. Recognizing the responsibility of carriers to safeguard the network and providing

specific steps for customers to take to meet their responsibilities will increase the likelihood that customers will take affirmative steps to secure their CPE.

Customers need to be informed by manufacturers and vendors, as well as carriers, about steps they can take to lessen the risk of toll fraud. The Commission should assign to an advisory committee the responsibility of drafting a warning to be provided by PBX manufacturers and any other specific steps that manufacturers will be required to take. The Commission should provide specific guidance on the elements of the proposed warning. It is not reasonable to require a manufacturer to provide the customer with an exhaustive written list of all the features and treatments conceivably necessary to protect against PBX compromise and abuse, or to require that warnings be sent regarding previously installed equipment. The Commission should also ensure that CPE manufacturers are not subject to conflicting obligations from other jurisdictions by preempting any other authorities from adding inconsistent obligations.

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The North American Telecommunications Association ("NATA") hereby submits its Reply Comments in response to Comments submitted pursuant to the Notice of Proposed Rulemaking ("NPRM") released in the above-captioned docket on December 2, 1993.

I. The Commission Must Rule That Carriers May Not Hold Customers Strictly Liable for Toll Fraud.

There is general agreement that all parties -- consumers, manufacturers, vendors, and carriers -- must work together to prevent toll fraud. Contrary to the claims of interexchange carriers ("IXCs") and local exchange carriers ("LECs"), however, such cooperation is not fostered by IXCs' current policy of holding customers strictly liable for any toll fraud associated with their PBXs. As NATA noted in its initial comments, the current "system" of holding customers strictly liable for toll fraud generates litigation and excessive costs, and causes unnecessary stress, ill-will and confusion throughout the community of business end users. Apart from its other effects, such litigation and ill-will is antithetical to the cooperation that the Commission recognizes is essential to combatting toll fraud.

The Joint Comments of Planned Parenthood and Reynolds & Reynolds are indicative of the harsh reality of the costs imposed by the current system of placing all liability for toll fraud on end users. The Joint Comments report that Planned Parenthood was a victim of toll fraud in excess of \$250,000.00 when its voice mail was manipulated by a criminal to obtain outgoing dial-tone.¹ Reynolds & Reynolds was a victim of toll fraud in excess of \$80,000.00 when its customer premises equipment ("CPE") was accessed over the company's 800 number to gain outgoing dial-tone.² Both victims were held completely liable by their carriers and both have filed complaints with the Commission challenging the imposition of liability. The complaints are still pending.

In this proceeding alone, the Commission has received more than fifty comments from customers who are engaged in continuing efforts to secure their communications systems from toll fraud. Generally, the comments reflect that customers frequently are not aware of the danger of toll fraud or the steps they should take to prevent it until it is too late. Leucadia National Corporation and American Investment Bank, both victims of toll fraud, noted that if their carrier had warned them of the risks of toll fraud, they would have been in a position to learn about and implement security measures that would have eliminated, or substantially reduced, the

¹ Joint Comments of Planned Parenthood of New York and Reynolds & Reynolds, at 2.

² Joint Comments of Planned Parenthood of New York and Reynolds & Reynolds, at 2.

likelihood and the extent of toll fraud on their communications system.³ Other commenting parties noted that even where they have taken "each and every protective step recommended by the IXC's and CPE vendors to secure [their] systems," they are still vulnerable to toll fraud because it is impossible to absolutely secure their system from fraud.⁴ Toll fraud does not affect only PBX's; it also victimizes Centrex users, whose PBX function is performed by a network-based service provided by LEC's. For instance, Instron Corporation recently filed a complaint at the FCC challenging the imposition of liability in the amount of \$82,055.52 for toll fraud committed through the Centrex service provided by Pacific Bell.⁵

The Commission must act immediately to relieve the burden on end users. Carriers must be prohibited from unilaterally imposing liability on "unknowing" customers. There is widespread agreement among those parties who submitted comments in this proceeding that carriers, at a minimum, should have an affirmative duty to warn customers of the risks of toll fraud.⁶ Only MCI, among the major IXC's who submitted comments, refuses to acknowledge that an IXC has

³ Comments of Leucadia National Bank and American Investment Bank ("Leucadia"), at 1.

⁴ See, e.g., Comments of West Georgia Medical Center, at 1; Comments of USL Capital, at 1.

⁵ In the Matter of Instron Corp. v. AT&T and Pacific Bell, File Nos. E-94-23 and E-94-24 (filed December 8, 1993).

⁶ See, e.g., Comments of Sprint, at 7-8; Comments of BellSouth, at 4; Comments of Tele-Communications Association ("TCA"), at 5.

any responsibility to provide information to customers about the risk of toll fraud associated with PBXs.⁷ The Commission should act immediately to prescribe warnings that carriers must issue to their customers if they intend to hold customers liable for any PBX-related toll fraud.

Contrary to the Comments of CompTel, the imposition of a warning requirement will not lead to excessive litigation.⁸ Clearly-defined rules will lessen, not increase, the frequency of litigation. NATA agrees with Teleport Communications Group that any warning requirements adopted by the Commission should specify minimally acceptable notification methods and prescribe acceptable tariff language.⁹

It is vital that very specific warnings be required. If IXC's want to hold customers liable, they must tell customers the specific steps they want customers to take to safeguard the IXC's network. IXC's should be permitted to hold customers liable only if customers do not take the specified steps. In general, customers should not be held accountable for toll fraud if they follow carriers' specific instructions for preventing remote access; control the distribution and use of authorization codes; notify the carrier promptly after learning of toll fraud, and cooperate with carriers and law enforcement agencies in the investigation of toll

⁷ Comments of MCI, at 6.

⁸ Comments of CompTel, at 3.

⁹ Comments of Teleport Communications Group at page 5.

fraud.¹⁰ Compliance with these requirements should insulate end users from liability for toll fraud.

CompTel predicts an "administrative and litigious nightmare" if the Commission's proposals are adopted.¹¹ On the contrary, the current system of strict liability without defined responsibilities for consumers has already plunged end users into just such a nightmare. If, however, the Commission implements a system of clearly-defined responsibilities for customers, and rules that customers who meet their obligations for fraud prevention will not be held liable, there will be less litigation and greater incentive for the carriers to safeguard the network.

NATA also agrees with the comments of the American Petroleum Institute that to the extent an end user fails to take the specifically prescribed steps, its liability for toll fraud should be limited to the carrier's "cost" of providing the service, or some reasonable share (less than 50%) of the total bill. If the carrier is allowed to recover the full market price of the service, the carrier will have no economic incentive to halt fraud.¹² If, on the other hand, the end user who fails to take specifically detailed steps is liable only for the cost of the service, the end

¹⁰ See Comments of Aeronautical Radio Inc., at 3.

¹¹ Comments of CompTel at 3.

¹² Even where the customer is at fault, the carrier should have an incentive to monitor its network so that the customer's loss is not exacerbated needlessly. Typically, the carrier is in the best position to stop losses through early detection of aberrant patterns of usage that may indicate fraud.

user will be encouraged to prevent fraud and the carrier's economic incentive to allow fraud to continue will be removed.¹³

II. Carriers Should be Required to Take Specific Steps to Safeguard the Network.

Most of the parties submitting comments also agree that carriers should be required to take other affirmative steps to secure the network and help end users reduce the risk of toll fraud. Many of the most important and efficient methods for preventing toll fraud are not currently offered by carriers. The Commission must require LECs to make international direct-dial blocking available to PBX owners and other business users.¹⁴ Experience in the payphone industry shows that international direct-dial blocking is very effective in decreasing the amount of toll fraud committed on the network. In addition to NATA, the two largest groups of end users, Tele-Communications Association ("TCA")¹⁵ and International Communications Association¹⁶ support requiring that the LECs offer international call blocking to all business customers.

A large number of the commenting parties agree with NATA's proposal that carriers should be required to monitor calling

¹³ See Comments of American Petroleum Institute, at 12.

¹⁴ This matter is already pending before the Commission in CC Docket No. 91-35, In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation.

¹⁵ Comments of TCA, at 3-4.

¹⁶ Comments of International Communications Association, at 4.

patterns and take appropriate action to investigate and resolve toll fraud abuse.¹⁷ Carriers must be required to provide monitoring services as part of their basic service provided to business users and should be required to implement a "credit limit" that stops a customer's loss from unauthorized calling. As the Comments of Pinellas County point out, the monitoring services that are available are offered at prices that are prohibitive for governments and small businesses.¹⁸ Many of the end users who submitted comments indicate that if these few requirements had been in place in the past, there would have been minimal toll fraud committed through PBXs.¹⁹

Notwithstanding the Comments of LinkUSA, recognizing the responsibility of carriers to safeguard the network will not reduce the customer's incentive to take measures to prevent toll fraud.²⁰ When customers have no idea what -- if anything -- they can do to prevent liability for toll fraud, they are not encouraged to take steps to limit access to their PBX. If, on the other hand, they are informed of the risks of toll fraud, what steps they can do to prevent toll fraud, and that taking those steps will relieve them

¹⁷ See, e.g., Comments of Leucadia, at 2; Joint Comments of Planned Parenthood, at 7 & n.13; Comments of American Petroleum Institute, at 12.

¹⁸ Comments of Pinellas County, Florida, at 4.

¹⁹ See, e.g., Comments of Leucadia, at 3-4.

²⁰ Comments of LinkUSA, at 3.

of liability, the number of end users taking action to secure their CPE should increase dramatically.

Contrary to the Comments of the Interexchange Carrier Industry Committee Toll Fraud Subcommittee, PBX fraud is not analogous to the theft of property owned by a business.²¹ First, unlike other property owned by a business, a PBX can be accessed remotely. Second, the PBX is not being stolen. The PBX is only the means to interconnect with the intruder's real target: the carrier's network. The goal of the thief is to steal network services. Because IXC's hold their customers liable for such stolen services, it is completely irresponsible for carriers to disclaim any obligation to implement fraud protection, or even to warn customers of the risk of subscribing to carrier services.

Preventing the IXC from shifting liability to customers would not harm the public interest. It would create incentives for the carriers to engage in early detection and monitoring of unusual traffic patterns and development of other security measures that can protect the network. Because carriers have not been required to absorb the cost of infiltration of their networks, the carriers have not had sufficient incentive to provide inexpensive and accurate monitoring and detection programs.

²¹ Comments of the Interexchange Carrier Industry Committee Toll Fraud Subcommittee, at 4.

CompTel asserts that network-based services are a relatively ineffective way of preventing toll fraud.²² This claim is unfounded. Carriers can monitor use of the network for changes in typical calling patterns and sudden "spikes" in use to unusual destinations or other aberrant patterns of usage. Carriers are therefore in the best position to be responsible for the early detection and prevention of fraud. Although it is possible to purchase CPE that performs real-time monitoring of calls, as a number of the LECs note,²³ such monitoring can be performed much more efficiently at the network level than by each individual customer. Returning to carriers some of the responsibility for safeguarding their network is the most efficient approach to preventing infiltration of the carriers' network and will help equalize the burdens of toll fraud.

III. The Commission Should Assign to an Advisory Committee the Responsibility of Drafting a Warning to be Provided by PBX Manufacturers and any Other Specific Steps that Manufacturers Will Be Required to Take.

There is also widespread support for a requirement that manufacturers and vendors provide warnings of the type proposed by the Commission.²⁴ NATA agrees that customers need to be informed

²² Comments of CompTel, at 5-6.

²³ See, e.g., Comments of GTE, at 4; Comments of NYNEX, at 18.

²⁴ See, e.g., Comments of American Petroleum Institute, at 5; Comments of South Carolina Office of Information Resources, at 4; Comments of Utilities Telecommunications Council, at 6.

by manufacturers and vendors, as well as carriers, about steps they can take to lessen the risk of toll fraud.

As mentioned above, Centrex service as well as PBXs can be vulnerable to penetration of hackers. Any warnings or other requirements imposed on PBX manufacturers also should be imposed on LECs providing Centrex.

The Commission should provide specific guidance on the elements of the proposed warning. In designing notices and warnings for CPE owners, the Commission should take into account consideration of feasibility. It is not practical for a manufacturer to list all possible ways in which a PBX can be configured with CPE not designed by that manufacturer. Further, a manufacturer cannot be certain how the PBX will be used, what changes may be made to the configurations once the PBX is installed, or whether the end user will follow the recommendations of the manufacturers regarding prevention of toll fraud. It may be reasonable to require a manufacturer, for example, to explain fully the use of default passwords and the necessity of modifying them,²⁵ and the risk of toll fraud associated with the DISA. NATA is opposed, however, to the suggestion of Pacific Bell and Nevada Bell that a manufacturer be required to provide the customer with an exhaustive written list of all the features and treatments

²⁵ See Comments of Communications Managers Association, et al., at 9.

conceivably necessary to protect against PBX compromise and abuse.²⁶ Such a requirement would be too open-ended to provide any guidance to the manufacturer, nor would it assist end users in taking concrete steps to prevent toll fraud.

Likewise, the Commission should not place manufacturers under a continuing duty to alert customers of newly discovered methods to circumvent the CPE's fraud-prevention capabilities,²⁷ or to provide warnings regarding previously-installed PBXs.²⁸ Communications Managers Association's suggested requirement that vendors maintain databases of customer contacts to update owners of new fraud schemes is also unreasonable. Manufacturers have no direct control over CPE once the equipment is installed and have no method of staying in contact with all owners of CPE. After installation, the manufacturer cannot ensure that the customer or another supplier or service provider has not modified the equipment. Therefore, manufacturers should not be held responsible for issuing warnings or other fraud prevention information relating to embedded equipment.

Carriers, on the other hand, remain in contact with end users after commencement of service and through any subsequent changes of address. A requirement that carriers provide warnings about toll

²⁶ See Comments of Pacific Bell and Nevada Bell, at 21.

²⁷ See Comments of Utility Telecommunications Council, at 6.

²⁸ Id., at 6.

fraud to customers on a regular basis will ensure that customers are well-informed about the risk of the network being infiltrated.

It is also important to remember that no matter how many steps are taken to prevent toll fraud, criminals are always coming up with new methods to defraud the network. Thus, a manufacturer cannot guarantee that a criminal will not be able to commit toll fraud no matter how many warnings are issued.

There are a number of complex issues before the Commission regarding what other steps manufacturers may be required to take in order to help customers secure access to the network through the PBX. For instance, one commenting party recommended that the Commission require that end users be able to physically remove features that are particularly vulnerable to fraud.²⁹ NATA is not necessarily opposed to requirements for specific actions that manufacturers must take, provided that such requirements are clearly defined by the Commission and apply only to newly manufactured equipment, not to previously installed PBXs. In addition, the Commission should be careful not to over-prescribe specific safeguards that must be added to equipment. Such an approach may have the unintended consequence of limiting development of improved security devices that go beyond the current state of the art. The Commission should not, in any event, attempt to resolve these finer points of fraud prevention in this

²⁹ Comments of CMA, at 9.

proceeding. Instead, these questions should be referred to the advisory committee for resolution.

NATA has serious concerns regarding TCA's suggestion that PBX manufacturers should be held responsible for any fraud committed through the maintenance port of the PBX. Securing the maintenance port, of course, is a matter of vital concern for manufacturers, who have taken dramatic steps to improve this and other aspects of PBX security. Assigning strict liability to a manufacturer, however, is a drastic step that should not be taken in this proceeding. The maintenance port can be compromised, for example, as a result of access by the customer without manufacturer supervision. If the Commission is of the opinion that there is any merit to the proposal, the question should be referred to an advisory committee for careful study.

Finally, the Commission should reject the suggestion of the Ad Hoc Telecommunications Users Committee that states should be free to impose more burdensome requirements on manufacturers notwithstanding their compliance with the Commission's rules.³⁰ Such an approach would defeat the purpose of establishing clearly-defined rules allocating responsibility for fraud prevention. The Commission should ensure that CPE manufacturers are not subject to

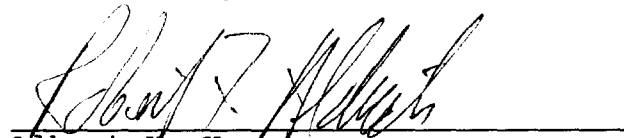
³⁰ Comments of the Ad Hoc Telecommunications Users Committee, at 4-9.

conflicting obligations and should preempt any other authority from adding any other obligations for CPE manufacturers.

CONCLUSION

For these reasons stated above, the North American Telecommunications Association respectfully requests the the Federal Communications Commission adopt a federal policy holding that IXCs can no longer hold customers strictly liable for toll fraud, invalidating any conflicting tariff provisions, and assigning to an advisory committee the task of clearly defining what steps a carrier can reasonably require a customer to take to safeguard the carrier's network.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert F. Aldrich", is written over a horizontal line.

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Dated: February 10, 1994

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of February, 1994, I caused a true copy of the Reply Comments of the North American Telecommunications Association to be served upon the parties listed below.

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